

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4510 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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Versus

STATE OF GUJARAT

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Appearance:

MR AR MAJMUDAR for Petitioners  
MR DA BAMBHANIA for Respondent No. 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE M.S.SHAH

Date of decision: 09/03/96

ORAL JUDGEMENT

Rule. learned A.G.P. Mr. Y.F. Mehta waives service on behalf of respondents Nos. 1 and 2 and learned advocate Mr. Prasant Desai waives service on behalf of respondent No.3.

At the request of the learned counsel for the parties, the matter is taken up for final hearing.

The main grievance voiced on behalf of the petitioner-University is that the State Government, instead of considering the question as to whether it itself should modify the town planning scheme, which is forwarded to it, by invoking the provisions of Section 65(1) of the Gujarat Town Planning and Urban Development Act, 1976 ('Act' for short), has, by impugned order dated 29th January 1995, has expressed that later on an application may be moved under Section 71 of the Act for variation of the scheme. According to the petitioner, the State Government itself should have considered before finalising the scheme, whether a case was made out by the University for sparing the land of the University, keeping in view of the fact that under the provisions of Section 40(3) of the Act the town planning scheme may make a provision for reservation of land for public purposes of all kinds. From the impugned order, it appears that the State Government did not direct itself in this regard for considering whether it can modify the scheme in view of the fact that the land is already used for public purpose by the petitioner-University. It was not necessary for the State Government to wait upto the stage of variation of the scheme under Section 71 of the Act which should be done only by a subsequent scheme to be published and sanctioned in accordance with the provisions of the Act. In view of this position, after some arguments, it was felt by all concerned that it would be better for the State Government to itself consider as to whether modification in the scheme was called for having regard to the contentions raised by the petitioner-University, before the scheme could be finalised as regards the land in question.

It is submitted on behalf of the petitioner that for this purpose the petitioner will make a fresh comprehensive application to the respondent-State Government for its consideration on the aspect as to whether it should invoke its power under Section 65 of the Act before finalisation of the scheme for modification, as may be suggested by the petitioner-University, within two weeks.

It is stated on behalf of the State Government by the learned Assistant Government Pleader that, on such application being made, the same shall be considered by the State Government in light of the provisions of Section 65 for taking a decision whether the scheme should be modified, as suggested by the petitioner before

it could be finalised. The decision will be taken by the State Government as expeditiously as possible preferably within eight weeks from today, notwithstanding the impugned order that has been passed by it. Until the decision is taken by the State Government the possession of the disputed lands, which is with the petitioner will not be disturbed.

Subject to the above directions, rule is discharged with no order as to costs. It will be open for the petitioner-University to challenge any adverse order in accordance with law.

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